

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-1429

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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B  
P/S

UNITED STATES OF AMERICA,  
Appellee,

-against-

Docket No. 75-1429

ERNESTO BATISTA,  
Appellant.

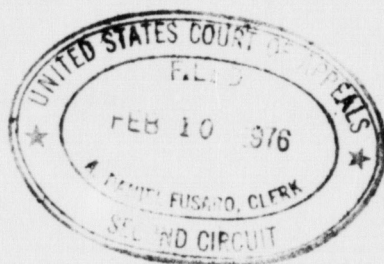
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APPENDIX

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ON APPEAL FROM A JUDGMENT OF THE  
UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK



ROBERT G. ROXBY, ESQ.

&

ROBERT LLOYD CORBIN, ESQ.  
Attorneys for Appellant  
ERNESTO BATISTA  
30 Christopher Street  
New York, New York 10014  
(212) 255-1313

PAGINATION AS IN ORIGINAL COPY



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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE PIERCE

75 CRIM. 320

A

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Dominic F. Amorosa AUSA 791-1983
ERNESTO BATISTA	9/29
MANUELA RODRIGUEZ	
JOSE R. HENRIQUES	
JULIAN CALLEGO	
	For Defendant:
	Lee J. Robbins (Rodriguez & Gallego) 377 B'way, N.Y.C. 10013 431-5933
	Robert E. Roxby (Batista) 30 Christopher, St. N.Y.C. 10014 255-1343

(07) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title					
Sec.					
21:346 Consp. to viol. Fed. Narcotic Laws. (Ct. 1)					
21:312, 341, (E)(1), (5). Distr. & possess. w/intent to					
distr. Cocaine schedule, II (Cts. 2-5)					
(Five Counts)					

DATE	PROCEEDINGS
3-27-75	Filed indictment.
4-7-75	All defts. No appearance. Court directs entry of not guilty plea. B/Ws ordered. Motions returnable in 10 days. Case assigned to Judge Pierce for all purposes. Cooper, J.
4-7-75	ALL DEFTS.-Bench Warrants Issued.
4-9-75	MANUELA RODRIGUEZ & JULIAN CALLEGO-Filed notice of appearance of Lee J. Robbins, as attorney for defts.
4-10-75	ALL DEFTS.-Filed Govt's. notice of readiness for trial on or after 4-30-75.
4-16-75	Deft. Batista and his attorney Robert E. Roxby present. Pre-trial conference held. Trial - September 27, 1975 at 9:30 A.M. Deft. pleads not guilty as charged. Bail continued at \$5,000 P.R.B. secured by \$500 cash.....Pierce, J.
4-17-75	ERNESTO BATISTA-Filed notice of appearance of Robert E. Roxby as attorney for deft.
5-5-75	JOSE H. HENRIQUES-Filed CJA Form 20 Copy 2 approving payment to Martin Rosen, dated 4-25-75.....Pierce, J.



DATE	PROCEEDINGS
05-30-75	ERNESTO BATISTA-Filed deft's. affidavit & notice of motion to suppress, ret.6-11-75.
05-30-75	ERNESTO BATISTA-Filed Deft's. affidavit & notice of motion for a bill of particulars and for discovery & inspection, ret. 6-11-75.
6-26-75	Deft. Batista (atty present) withdraws his plea of not guilty and pleads guilty to count 1 only. Pre-sentence investigation ordered. Sentence 9-4-75. Bail continued and bail limits are extended to include E.D.N.Y. and S.D.N.Y.....Pierce,J.
8-18-75	ERNESTO BATISTA-Filed affidavit & notice of motion of Robert Lloyd Corbin and Robert G. Roxby to be relieved as co-counsel for deft.
9-4-75	Deft. Batista sentence adjourned to 9-19-75 at 9:15 A.M. Bail (\$500 Cash) continued.....Pierce,J.
9-5-75	ERNESTO BATISTA-Filed MEMO ENDORSED on motion filed 8-18-75. Motion denied for the reasons stated on the record 8-20-75.....Pierce,J. (mailed notice)
9-19-75	ERNESTO BATISTA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SEVEN (7) YEARS on count 1. Pursuant to the provisions of Title 21, Section 841, United States Code, the deft. is placed on Special Parole for a term of THREE (3) YEARS to commence upon expiration of sentence. Deft. is remanded. Counts 2,3,4, and 5 are dismissed on motion of deft's. counsel with consent of Govt.....Pierce,J. Issued commitment 9-24-75.
9-29-75	ERNESTO BATISTA-Filed deft's. notice of appeal from the final judgment of conviction entered on 9-19-75. Mailed copies to Ernesto Batista, M.C.C., 150 Park Row,N.Y.C. and U.S. Attorney's Office.

A TRUE COPY

RAYMOND E. BURCHARDT, Clerk

By

Deputy Clerk

/A

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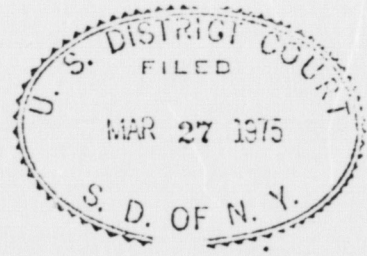
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x  
UNITED STATES OF AMERICA, :  
 :  
- v - :  
 :  
ERNESTO BATISTA, :  
MANUELA RODRIGUEZ, :  
JOSE R. HENRIQUES and :  
JULIAN GALLEGO, :  
 :  
Defendants. :  
----- -x

75 CRIM. 320

B

INDICTMENT  
75 Cr.



The Grand Jury charges:

1. From on or about the 1st day of November, 1974, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ERNESTO BATISTA, MANUELA RODRIGUEZ, JOSE R. HENRIQUES and JULIAN GALLEGO, the defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.



2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. On or about February 11, 1975 the defendant ERNESTO BATISTA sold approximately 124.90 grams of cocaine hydrochloride at or near 263 West End Avenue, New York, New York.

MICROFILM

MAR 27 1975

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a-

2. On or about February 28, 1975, the defendant ERNESTO BATISTA drove to 355 West 85th Street, New York, New York.

3. On or about March 14, 1975 the defendant ERNESTO BATISTA entered the premises situated at 2696 Broadway, New York, New York.

4. On or about March 14, 1975 the defendant ERNESTO BATISTA drove to the vicinity of 62 Roselle Street, Mineola, Long Island, New York.

5. On or about March 14, 1975 the defendant ERNESTO BATISTA possessed a package containing cocaine hydrochloride.

6. On or about March 14, 1975 the defendants JULIAN GALLEG0 and JOSE HENRIQUES entered the premises known as Apartment 2-F, 62 Roselle Street, Mineola, New York.

(Title 21, United States Code, Section 846.)

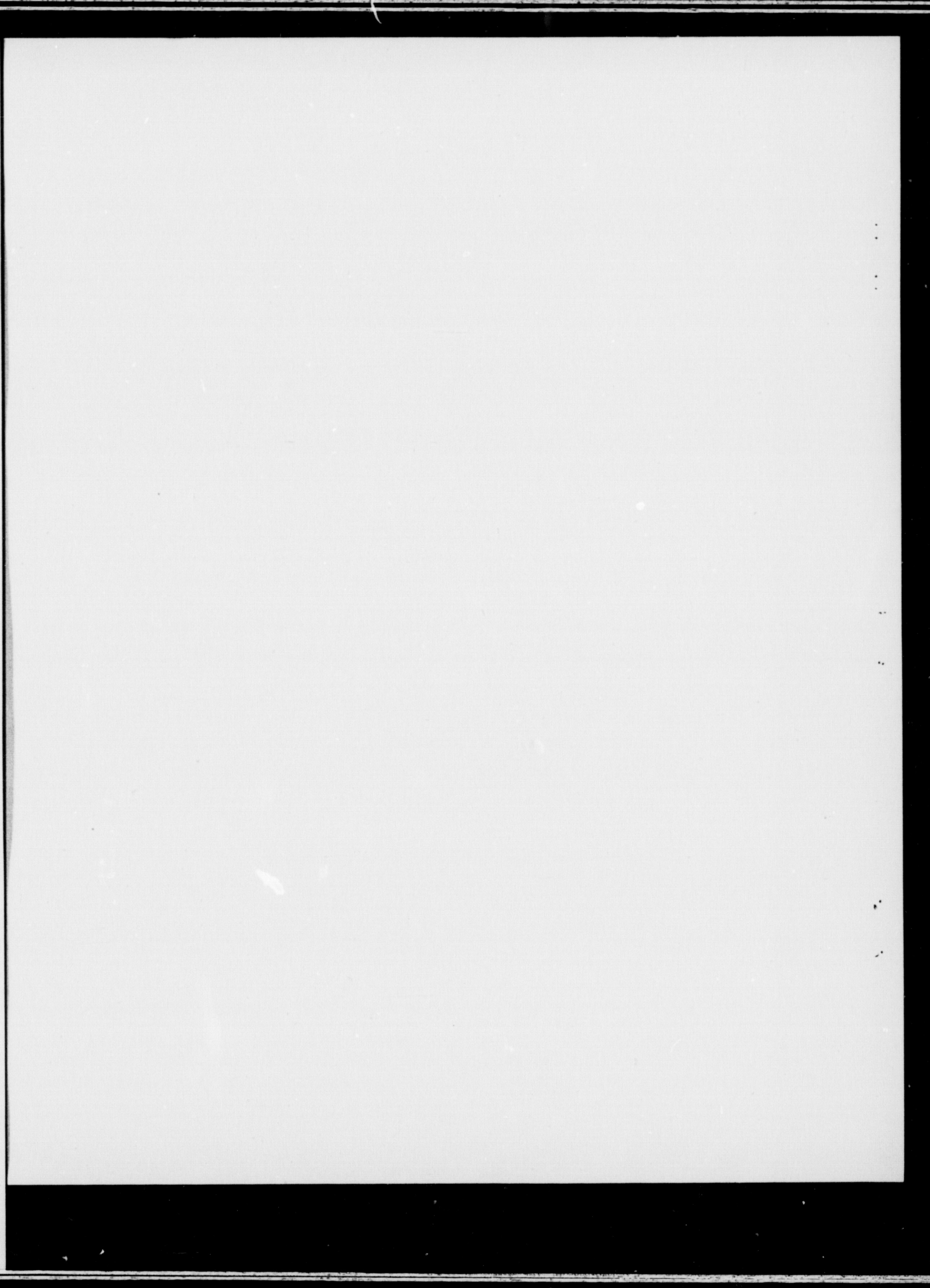
COUNT TWO

The Grand Jury further charges:

On or about the 11th day of February, 1975, in the Southern District of New York, ERNESTO BATISTA, MANUELA RODRIGUEZ, JOSE R. HENRIQUES and JULIAN GALLEG0, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 0.11 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)





COUNT THREE

The Grand Jury further charges:

On or about the 11th day of February, 1975, in the Southern District of New York, ERNESTO BATISTA, MANUELA RODRIGUEZ, JOSE R. HENRIQUES and JULIAN GALLEG0, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 124.90 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

On or about the 19th day of February, 1975, in the Southern District of New York, ERNESTO BATISTA, MANUELA RODRIGUEZ, JOSE R. HENRIQUES and JULIAN GALLEG0, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 0.07 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)



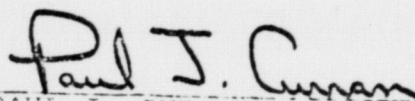
COUNT FIVE

The Grand Jury further charges:

On or about the 28th day of February, 1975, in the Southern District of New York, ERNESTO BATISTA, MANUELA RODRIGUEZ, JOSE R. HENRIQUES and JULIAN GALLEG0, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 124.07 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

  
FOREMAN

  
PAUL J. CURRAN  
United States Attorney

75 CIV. 320

Form No. USA-335-274 (Ed. 9-25-58)

**United States District Court**

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ERNESTO BATISTA,  
MANUELA RODRIGUEZ,  
JOSE R. HENRIQUES and  
JULIAN GALLEGO,

Defendants.

**INDICTMENT**

21 U.S.C. §§§§846, 812, 841(a)(1)  
and 841(b)(1)(A).

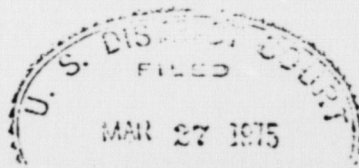
PAUL J. CURRAN

United States Attorney

A TRUE BILL

Foreman

FPI-86-1-13-70-20M-4925



# JUDGE PIERCE

4-7-75. Deft: Ernesto Batista, Manuel Rodriguez, Jose Henriquez, Julian Gallego, H.T. present. Court enters plea of N/G and deft. Deft. Case assigned to Pierce. 10 days for Motions. B/W.

Aug 16, 1975 - Deft Batista and his atty Robert E. Roth present - ~~P. Deft pleads not guilty charged from him Roth - Col~~ Trial - September 27, 1975 at 9:30 - Bail cont'd.

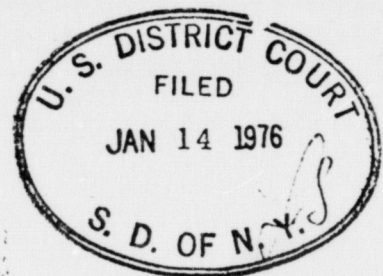
SEP 26 1975 - Deft Batista (att present) withdraws plea of not guilty + pleads guilty to Count 1 only. Ordered - Sentence 9-4-75 - Bail cont'd and all limits are extended to include E.D.N.Y. and D.N.Y.

September 4, 1975 - Sentence adjourned to 9/19/75 at 9:15 A.M. Bail (\$500. cash) continued.

SEP 19, 1975 - Deft (att present) Pierce, J sentenced to 7 years on count 1. year Special Parole pursuant to T-21, Sect 841 to commence upon expiration of sentence.



1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----X  
4 THE UNITED STATES OF AMERICA :  
5 vs. :  
6 ERNESTO BATISTA, :  
7 Defendant. :  
8 -----X



75 Cr 320

June 26, 1975  
4:45 p.m.

9  
10 Before: HON. LAWRENCE W. PIERCE,  
11 District Judge

12  
13  
14 APPEARANCES

15 PAUL J. CURRAN,  
16 United States Attorney for the  
Southern District of New York

17 BY: DANIEL F. AMOROSA, ESQ.  
18 Assistant United States Attorney

19  
20 ROBERT E. ROXBY, ESQ.,  
21 ROBERT LLOYD CORBIN, ESQ.,  
Attorneys for defendant.

22  
23 SYLVIA AGUILAR,  
24 Spanish Interpreter.

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THE CLERK: United States of America vs. Ernesto Batista.

MR. AMOROSA: Ready for the government.

THE COURT: Appearing here is Mr. Daniel Amorosa.

MR. AMOROSA: Yes, sir, for the government.

THE COURT: I was just wondering if you would be able to stand up to acknowledge being here.

MR. AMOROSA: I'm sorry.

THE COURT: Mr. Robert Roxby appears for the defendant.

Is that so? Who is Mr. Roxby?

MR. ROXBY: Your Honor, I am Mr. Roxby, and Mr. Corbin is co-counsel. We are both appearing today.

MR. CORBIN: Good afternoon, your Honor.

THE COURT: And the defendant is Ernesto Batista. He is present?

MR. CORBIN: That's correct.

THE COURT: And we have the interpreter, Miss Aguilar.

Will counsel concede the qualifications of the interpreter?

MR. CORBIN: Yes, your Honor.

(SYLVIA AGUILAR was sworn as the Spanish interpreter by the Clerk of the Court.)



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2 MR. CORBIN: At this time Mr. Ernesto Batista  
3 wishes to withdraw his previously entered plea of not guilty  
4 and enter a plea of guilty to count one of the indictment  
5 herein, which is conspiracy to possess and to possess with  
6 intent to distribute certain controlled substances, and this  
7 will cover, your Honor, the entire indictment herein, and  
8 in addition, any crimes for which Mr. Batista may be held  
9 accountable in the future in the Eastern District of New  
10 York that are connected with the subject matter of the case  
11 herein.

12 THE COURT: That is a matter you have taken up  
13 with the government.

14 MR. CORBIN: That's correct, your Honor.

15 THE COURT: Is the offer of the plea as stated apt  
16 to be satisfactory to the government?

17 MR. AMOROSA: Yes, it is. Yes, it is.

18 In return for Mr. Batista's plea of guilty to count  
19 one of this indictment, the government will ask the Court to  
20 dismiss all remaining counts of this indictment at the time  
21 of sentencing and, in addition to that, the government will  
22 not prosecute Mr. Batista for any crimes that he committed in  
23 connection with this conspiracy, any substantive crimes, in  
24 the Eastern District of New York.

25 THE COURT: When you speak of substantive crimes,



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2 in the Eastern District of New York, you mean related hereto?

3 MR. AMOROSA: Yes, sir, related to this particular  
4 conspiracy and in furtherance of it.

5 THE COURT: All right. Take the plea.

6 Read the count and see how the defendant offers to  
7 plead.

8 Which overt act do you want?

9 MR. AMOROSA: Pardon me?

10 THE COURT: Which overt act do you wish read to  
11 the defendant?

12 MR. AMOROSA: Your Honor, I would suggest -- I'm  
13 not certain what the defendant is going to say with respect  
14 to his admissions as to any overt acts. I would like them  
15 all read to the defendant.

16 He is involved directly in overt acts one, two,  
17 three, four and five of the six overt acts mentioned in  
18 furtherance of the conspiracy, and I don't know which one the  
19 defendant will admit to. As the Court is aware, only one is  
20 necessary.

21 THE COURT: Read the first two overt acts.

22 THE CLERK: Ernesto Batista, you are charged in  
23 count one of indictment 75 Criminal 320 as follows:

24 The defendants Ernesto Batista, Manuela Rodriguez,  
25 Jose Enrique and Julian Gallego, the defendants, and others

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2 to the grand jury known and unknown, unlawfully, intentionally  
3 and knowingly combined, conspired, confederated and agreed  
4 together and with each other to violate sections 812, 841(a)(1)  
5 and 841(b)(1)(A) of Title 21, U.S. Code.

6 It was part of said conspiracy that the said de-  
7 fendants unlawfully, intentionally and knowingly would dis-  
8 tribute and possess with intent to distribute Schedule I and  
9 II Narcotic drug controlled substances, the exact amount  
10 thereof being to the grand jury unknown, in violation of  
11 Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21 U.S. Code.

12 Overt Acts:

13 In furtherance of the said conspiracy and to affect  
14 the objects thereof, the following overt acts were committed  
15 in the Southern District of New York and elsewhere.

16 1. On or about February 11, 1975, the defendant  
17 Ernesto Batista sold approximately 124.90 grams of cocaine  
18 hydrochloride at or near 263 West End Avenue, New York, New  
19 York.

20 2. On or about February 28, 1975, the defendant  
21 Ernesto Batista drove to 355 West 85th Street, New York, New  
22 York.

23 Do you understand the charge in count one of the  
24 indictment?

25 THE DEFENDANT: (Through the interpreter) Yes.



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2 THE CLERK: How do you offer to plead as to count  
3 one?

4 THE DEFENDANT: (Through the interpreter.) Guilty.

5 THE COURT: Mr. Amorosa, how many grams are in an  
6 ounce?

7 MR. AMOROSA: I would say approximately 30, your  
8 Honor.

9 THE COURT: All right.

10 (The Court interrogated the defendant through the  
11 interpreter as follows:)

12 Q What is your name, sir?

13 A Ernesto Batista.

14 Q How old are you?

15 A I was born in 1945.

16 Q What month and day?

17 A February 26th.

18 Q How old are you now?

19 A 30.

20 Q You do not speak English?

21 A No.

22 Q You speak Spanish?

23 A Yes.

24 Q Do you read Spanish?

25 A Yes.

2 Q How far did you go with your education?

3 A Third grade.

4 Q Where was that?

5 A Santo Domingo.

6 Q How long have you been in this country?

7 A From 1962.

8 Q Are you married or single?

9 A I am married and divorced.

10 Q Any children?

11 A No.

12 Q What do you do for a living normally?

13 A I'm a professional boxer and trainer.

14 Q Are you currently under the care of any kind of a  
15 doctor?

16 A No. I am in training.

17 Q Have you been hospitalized or treated recently for  
18 alcoholism, for narcotic addiction or any type of drug abuse?

19 A Never.

20 Q Are you feeling well today?

21 A Yes.

22 Q You have received a copy of the indictment against  
23 you, have you not?

24 A No.

25 Q Did you lawyer get a copy?



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2 A Yes.

3 Q And did he go over it with you?

4 A Yes.

5 Q Has he explained to you what the charge is here?

6 A Yes.

7 Q Do you fully understand it?

8 A Yes.

9 Q Have you told your lawyer everything you know about  
10 the case?

11 A Yes.

12 Q Have you held anything back from him?

13 A No.

14 Q Do you understand that if you did not plead guilty  
15 you would have the right to have a speedy and public trial by  
16 a jury of 12 people?

17 A I do not understand because it is my lawyer who  
18 knows what he is doing.

2 19 Q Let us go back again.  
20 Your lawyer read the charges to you, is that right?

21 A Yes.

22 Q And do you fully understand the charges?

23 A Yes.

24 Q Have you told your lawyer everything you know about  
25 the case?

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2 A Yes.

3 Q Have you held anything back from him?

4 A Yes.

5 Q Is there something about this case you have not told  
6 your lawyer?

7 A No, I have told him everything.

8 Q Do you understand that if you did not plead guilty  
9 to the count, you would have a right to a speedy and public  
10 trial by a jury of 12 people?

11 A I do not understand that.

12 Q You have told us you want to plead guilty; is that  
13 right?

14 A Yes, yes.

15 Q If you did not plead guilty, then since these  
16 charges have been brought against you, you would have a  
17 right to have a trial in public promptly and you could be  
18 tried by a jury of 12 people, who would have to decide whether  
19 you were guilty or not guilty.

20 Do you understand that?

21 A Yes.

22 Q And do you understand that at such a trial you would  
23 be presumed innocent, unless and until the government estab-  
24 lished your guilt beyond a reasonable doubt to the satisfac-  
25 tion of all 12 jurors? Do you understand that?



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2 A Yes.

3 Q And upon such a trial you would have the right to  
4 confront and cross examine all witnesses called by the govern-  
5 ment against you?

6 Do you understand that?

7 A Yes.

8 Q And upon such a trial you could remain silent and  
9 no inference could be drawn against you by reason of your  
10 silence, or if you wanted to, you could take the stand and  
11 testify in your own defense.

12 Do you understand that?

13 A Yes.

14 Q And if you wanted to, you could have a trial before  
15 a Judge without a jury, in which event the same thing would  
16 be true, the burden would still be on the government and you  
17 would have the same constitutional rights.

18 Do you understand that?

19 A Yes.

20 Q And at such a trial should you wish one, you would  
21 have the right to subpoena witnesses and evidence for your  
22 own defense.

23 Do you understand that?

24 A Yes.

25 Q And if your offer to plead guilty to this count is

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2 accepted here today, you give up these rights with respect to  
3 this charge against you and the Court can impose sentence upon  
4 you just as if the jury had brought in a verdict of guilty  
5 against you.

6 Do you understand that?

7 A Yes.

8 Q If this Court should accept your offer of a plea of  
9 guilty to this count, the Court has the power to impose upon  
10 you a term of imprisonment up to 15 years or a fine of up to  
11 \$25,000, plus three years special parole, or some combination  
12 thereof.

13 Do you understand that so far?

14 A Yes.

15 Q And if you have a prior conviction for narcotics or  
16 drug law violation, then you may receive up to 30 years in  
17 prison or be fined up to \$50,000 or both, or some combination  
18 thereof, plus six years special parole term.

19 Do you understand that?

20 A Yes.

21 MR. AMOROSA: Judge, I would like to --

22 THE COURT: There is a correction there.

23 MR. AMOROSA: I just want to make it clear, Judge,  
24 that we haven't filed any second offender information against  
25 this defendant.



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2 THE COURT: You have not?

3 MR. AMOROSA: We have not and we have no intentions  
4 of doing so because he isn't a second offender.

5 THE COURT: Because he is not?

6 MR. AMOROSA: He is not.

7 THE COURT: I see. Then let's go back.

8 BY THE COURT:

9 Q Let me correct that.

10 If your plea of guilty to this charge is accepted,  
11 the Court has the power to impose upon you a fine of up to  
12 \$25,000 or imprisonment of up to 15 years, or both, or some  
13 combination thereof, plus a special parole term of 3 years.

14 Do you understand that?

15 A Yes.

16 Q Do you understand that if the terms and conditions  
17 of the special parole are violated, the parole term may be  
18 revoked and if the special parole term is revoked the original  
19 prison term imposed will be increased by an additional prison  
20 term equal to the length of the special parole and you may be  
21 required to serve all or a part of this additional term of  
22 imprisonment.

23 Do you understand that?

24 A Yes.

25 Q Have you been induced to offer to plead guilty by

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2 reason of any promises, statements or predictions by anybody  
3 to the effect that you would get leniency or special treat-  
4 ment or consideration if you pleaded guilty instead of going  
5 to trial, that is, other than has been stated here earlier  
6 by your attorney and by the government's attorney?

7 A Nobody has told me.

8 Q You understand me? You understand that the govern-  
9 ment attorney and your attorney have indicated that if your  
10 plea of guilty is accepted by the Court, on the day you are  
11 sentenced the government has stated that a request will be made  
12 to dismiss all remaining counts in the indictment here and  
13 the government has stated through the Assistant United States  
14 Attorney here that you will not be prosecuted as to any sub-  
15 stantive crimes relating to this case which arose or occurred  
16 in the Eastern District of New York, Brooklyn or Long Island?

17 Do you understand that?

18 A Yes.

19 Q Have any other promises been made to you of any  
20 kind?

21 A No.

22 Q Have you been induced to plead guilty by reason of  
23 any fear or pressure or force or the like?

24 A No.

25 Q Are you presently under the influence of any



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substance such as alcohol or drugs which might affect your  
ability to understand what you are doing here today?

A I am normal.

Q The answer is no?

A I am normal.

Q I want a direct answer.

Are you under the influence of any substance such as  
alcohol or drugs?

A Neither.

Q Is there anything you wish to ask the Court at this  
time about this charge or the consequences of pleading guilty?

A Nothing.

Q Then may we understand that you are offering to  
plead guilty because, indeed, you believe you are guilty of  
this charge?

A Yes.

THE COURT: Does the government represent, Mr.  
Amorosa, that the government has enough evidence to make out  
a prime facie case?

MR. AMOROSA: Yes, we do.

THE COURT: Counsel, do you know of any valid legal  
defense which would prevail if you went to trial or do you  
know of any reason why the defendant should not plead guilty?

MR. CORBIN: No, your Honor.

In addition, I might add quite briefly, we had a meeting two weeks ago with his fiancée who speaks Spanish and about two days later we had another meeting with a friend of his also speaks Spanish. We went over the consequences of going to trial, the evidence against the defendant as discussed by myself, the defendant, Mr. Roxby and Mr. Amorosa.

I explained to the defendant on several occasions exactly what conspiracy is, I explained to him what a trial is, I explained to him the fact that the Court would be asking him many questions about his rights and his right to have a trial today, and he indicated to me at that time, as he indicates to the Court today, that he wants to plead guilty to count one of the indictment.

THE COURT: All right.

Q That is all so, is that right?

A Yes.

Q And you still wish to plead guilty?

A Yes.

Q One final thing: you have to tell me what it is you say you are guilty of.

First of all, the indictment says that from November 1, 1974 until the date of the filing of the indictment, that is, March 27, 1975, that there was an agreement of some kind or other to violate the narcotic laws by distributing a drug



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substance, which is a controlled substance.

First of all, is the time period correct?

A Yes.

Q And next, was there an agreement of some kind about drugs, or an understanding?

Did you have an understanding with somebody that had something to do with drugs during this period?

A With another person? What other person?

Q Did you agree to do something with some drugs during that period?

A With who?

THE COURT: Is this a sale?

MR. AMOROSA: Yes. Overt act one was a sale to an agent.

THE COURT: All right.

BY THE COURT:

Q On or about February 11, 1975, did you sell some cocaine to somebody at or near 263 West End Avenue, New York?

A Yes.

Q What time of the day was it?

A I do not remember.

Q Was it night time or day time?

A At night, about 6 in the evening.

Q Was it indoors or outdoors?

1  
2 A Inside the house.

3 Q And was that house at 263 West End Avenue?

4 A Yes.

5 Q And before you sold it, did you have a conversation  
6 with that person or with somebody else about making this sale?

7 A Yes.

8 Q Was it the same person that you talked with or was  
9 it somebody else?

10 A Which other person?

11 Q I say, with respect to this sale, did you have a  
12 conversation at an earlier point in time with that person  
13 about this sale or with somebody else about this sale?

14 A Yes.

15 Q Who was the other person?

16 A Pablo.

17 THE COURT: That is not the agent, is it?

18 MR. AMOROSA: No, sir, it is not.

19 BY THE COURT:

20 Q And what did you agree to do when you talked with  
21 Pablo?

22 A He was going to find the drugs.

23 Q Then what was he going to do with them?

24 A I was going to take the drugs to 263 West End.

25 Q And did that happen?



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2 A Yes.

3 Q You knew it was against federal law to do that, did  
4 you not?

5 A I knew that I was violating the law, but I did not  
6 know that it was federal.

7 Q And you intended to do what you di, is that not so?

8 A Yes.

9 Q You knew what you were doing?

10 A Yes.

11 Q And on or about February 28, 1975, did you drive to  
12 355 West 85th Street, New York, New York?

13 A That is where I live.

14 Q Did you drive there that day?

15 A I had to drive. I do not remember if it was that  
16 day, but I have to enter and leave the house.

17 Q And you do it by automobile sometimes?

18 A I have a car.

19 Q What I am trying to find out is, did you have a car  
20 on or about February 28, 1975, and did you drive to that ad-  
21 dress on or about that date, that day, the day before, the  
22 day after?

23 A Every day I leave here. I live here.

24 Q Did you have a car in February of 1975?

25 All right. Let me ask you another one.

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2 Here is another count.

3 On or about March 14, 1975, another overt act, did  
4 you drive to the vicinity of 62 Rossele Street in Mineola,  
5 Long Island, New York?

6 A Yes.

7 Q And did you have a package of cocaine in your  
8 possession at that time?

9 A Yes.

10 THE COURT: All right. Anything further?

11 MR. AMOROSA: No, sir.

12 THE COURT: Anything further?

13 MR. CORBIN: Your Honor, not with respect to the  
14 plea.

15 THE COURT: The plea of not guilty is withdrawn.  
16 The plea of guilty is accepted to count one, and the clerk is  
17 directed to enter that plea, and a presentence report is re-  
18 requested.

19 Counsellor, make your client available to the pro-  
20 bation department.

21 We will set the matter down for sentence on August  
22 26, 1975.

23 MR. ROXBY: Can we do it sometime in early September  
24 your Honor?

25 THE COURT: All right.



MR. CORBIN: Would the fourth be convenient to the Court?

THE COURT: I think it will be.

Thursday, September 4, at 4:45 p.m., this courtroom, but check the law journal to make sure I am still in this courtroom.

All right. What is the bail conditions?

MR. AMOROSA: Your Honor, I believe the defendant has posted \$7500 in cash, and we ask that that be continued pending sentence.

MR. ROXBY: Your Honor, I request the same bail conditions.

THE COURT: All right. The same bail.

MR. ROXBY: Also, could we have the Eastern District included as the areas permissible for the defendant to --

MR. AMOROSA: We have no objection to that, your Honor.

THE COURT: All right.

MR. AMOROSA: Eastern District and Southern District.

THE COURT: The limits, then, are to include Eastern and Southern Districts.

MR. CORBIN: Thank you, your Honor.

THE COURT: If there is nothing further --

MR. AMOROSA: Your Honor, the other three defendants

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2 in this case are fugitives and we will notify the Court as  
3 soon as one or the other is picked up.

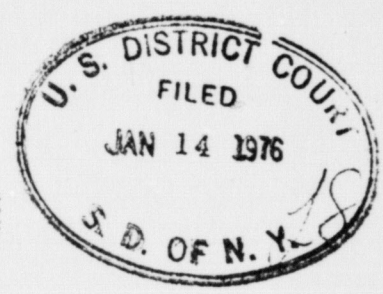
4 THE COURT: All right, counsellor.  
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11 I (We) hereby certify that the foregoing  
12 is a true and accurate transcript, to the best  
13 of my (our) skill and ability, from my (our)  
14 stenographic notes of this proceeding.

*Rudolph D. Tascone*  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
:  
vs. : 75 Crim. 320  
:  
ERNESTO BATISTA, :  
:  
Defendant. :  
:  
----- X

75 Crim. 320

September 4, 1975  
4:30 p.m.

Before:

HON. LAWRENCE PIERCE,

District Judge.

APPEARANCES:

THOMAS J. CAHILL, ESQ.,  
United States Attorney for the  
Southern District of New York  
DOMINIC AMOROSA, ESQ.,  
Assistant United States Attorney.

ROBERT G. ROXBY, ESQ.,  
and  
ROBERT CORBIN, ESQ.,  
Attorneys for Defendant.

AL DE FLORES, Official Spanish Interpreter.

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THE COURT: This is United States versus Batista,  
75 Criminal 320. Present is the defendant Ernesto Batista

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and the interpreter is present, Mr. Al De Flores. Appearing for the defendant is Mr. Robert Roxby and Mr. Robert Corbin. Appearing for the government is Mr. Dominic Amorosa.

A L D E F L O R E S, was duly sworn as official Spanish interpreter.

THE COURT: The Court has received a pre-sentence report from the Probation Office. It has been shared with defendant's attorneys but not with the government's attorney, Mr. Amorosa.

MR. AMOROSA: Yes, it has. Indeed, I am reading it right now.

THE COURT: It has been shared with the AUSA also. Mr. Batista, you are now before the Court for sentencing. On June 26, 1975 you pleaded guilty to the offense charged in count one of the indictment. In substance, you were convicted of conspiracy to violate the narcotic laws of the United States government. For the offense charged in that count the law provides a maximum punishment of up to 15 years in prison or a fine of up to \$25,000 or both or some combination thereof, and, in addition, a mandatory special parole term of at least three years to follow any term of confinement.

Mr. Roxby or Mr. Corbin, do you know of any reason why sentence should not be imposed at this time or do you have anything to say on Mr. Batista's behalf or any information

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2 to present in mitigation of sentence? First, is there any  
3 reason why sentence should not be imposed?

4 MR. ROXBY: Yes, your Honor. What we would like  
5 to suggest to the Court first, with reference to the proba-  
6 tion report, the pre-sentence report that has been submitted  
7 to your Honor, Mr. Corbin and I have read it very quickly this  
8 afternoon and government's counsel is presently reading it for  
9 the first time.

10 THE COURT: It has been available to all counsel for  
11 several days.

12 MR. ROXBY: Then let me apologize for not being here  
13 a day earlier to study it more thoroughly, but on reading it  
14 I find it so inflammatory and prejudicial, and its contents  
15 not particularly relevant, especially when it goes into the  
16 subject areas which are not even contained in the indictment,  
17 allegations that purportedly are commissions that this man has  
18 done, they should not be before this Court.

19 This man has pled guilty to one count of an indict-  
20 ment and the purpose of this report is to give the Court back-  
21 ground information as to this individual, his education status,  
22 his history of work record, his past or present appearances  
23 in the courts before the courts for perhaps prior commissions.  
24 This report here goes into things that I have never ever  
25 known about about this case and the government never even told



2 me about. I don't even know that the government itself, its  
3 counsel, was personally aware of some of the statements that  
4 are stated in that report by the probation officer.

5 I am sure the Judge upon reading it, as judicious  
6 and fair as you are, you must have some conclusions in your  
7 own mind which could very seriously affect the outcome of the  
8 sentencing here. The first four or five pages I read of that  
9 report are absolutely shocking to me. They are not the  
10 proper material to be contained in a probation or pre-sentenc-  
11 ing report. They have no relevancy to this particular man.

12 THE COURT: What do you mean, no relevance?

13 MR. ROXBY: It is like the man sitting as judge and  
14 jury and drawing up conclusions and presenting them to the  
15 Court as to what this man may or may not have been involved  
16 in. Some of the things I have read there were not a part of  
17 the case at point at all.

18 THE COURT: Counselor, I don't understand there to  
19 be that kind of a limitation imposed, that a pre-sentence  
20 report may only address itself to the matters which are  
21 essentially charged in the indictment. I don't think you are  
22 really saying that.

23 MR. ROXBY: The pre-sentence report, your Honor,  
24 should not be addressing itself to the issues of the case.  
25 That's behind us.



2 THE COURT: I think it should indeed do that. The  
3 issues of the case. In fact, one of the complaints I have is  
4 that sometimes we don't know enough about more of the issues  
5 in the case. In fact, in handling criminal cases in this  
6 court, one of the things that tends to be disturbing is that  
7 those are the issues that are rarely addressed, and for under-  
8 standable reasons.

9 When we get Rule 35 motions, it is a rare matter  
10 that a defendant even starts off talking about the crime t-at  
11 was charged and that he pleaded guilty to or was convicted.  
12 Defendants' attorneys rarely start off talking about the crime  
13 that was charged or that he pleaded guilty to. But that's  
14 understandable.

15 But the Judge has to know something more about the  
16 case than the scant words appearing in the count. This indeed  
17 is quite detailed in addressing itself to your client's alleged  
18 involvement in various aspects of the drug traffic.

19 MR. ROXBY: That's what concerns me so much, your  
20 Honor, because these are facts that we have never been privy  
21 to, and I have discussed the indictment and Mr. Corbin has too  
22 at great length with Mr. Batista, and went over all of the  
23 overt acts stated in the indictment, none of these things  
24 that are brought forth to the Court here are things we have  
25 gone over with the government. I don't even know that this

2 man has any knowledge of what the statements contained in that  
3 report say he is supposed to have done.

4 MR. AMOROSA: Your Honor, perhaps I can add a word  
5 here. I have read through the first four pages of the report  
6 with respect to the crime at hand, and I can represent to the  
7 Court that that information has come from my file. If the  
8 government had gone to trial in connection with this matter,  
9 what your Honor reads there in the first four pages your  
10 Honor would have heard from the witness stand in connection  
11 with this man.

12 There are some references to marijuana. Perhaps we  
13 would not have had testimony to that effect, but with respect  
14 to those cocaine transacitons which the report reveals, the  
15 government had testimony to that effect. We would have had  
16 testimony by an informant, we would have testimony by several  
17 drug enforcement agents with respect to those transactions.

18 I could represent that my reading has revealed no  
19 errors that I am aware of in connection with what the testimony  
20 would have been. I am not a judge and I am not a jury, but  
21 that's what my file reveals, and that's the evidence the  
22 government would have presented to the Court and the jury had  
23 we gone to trial.

24 MR. ROXBY: Then, your Honor, I would say that we  
25 had a meeting, maybe two, with Mr. Amorosa, we made a motion



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for a bill of particulars on discovery, and none of this information was revealed to counsel, if the government was purportedly being open and frank with us. Besides that, we have already pleaded our defendant guilty to one count. My point is he has taken upon himself with full knowledge the responsibility of pleading guilty to one count.

A probation report should go into the man's background, into things that are relevant to him and not go and try the case on its own. The probation officer isn't supposed to sit here and do your Honor's job or the government's job in proposing to submit to you in a report what the testimony would have been brought out at a time when the case was brought on for trial.

THE COURT: How else is the sentencing judge to find out the various facets of alleged information which purportedly could be related to the case for which the judge is about to sentence the defendant involved?

MR. ROXBY: By looking at his criminal record, by interviewing people who know him, by checking with his employers, relatives and friends.

THE COURT: Suppose it should develop that there are very, very serious aspects about a particular defendant with the crime charged which don't come out from his friends, relatives, from his mouth, and, indeed, perhaps he would have no



2 criminal record, what then is the Court to do, not avail it-  
3 self of information in the government's files which would show  
4 it?

5 As Mr. Amorosa states, it might or might not have  
6 been accepted by a jury, but at least it represented the  
7 evidence that the government had in its possession. It is  
8 customarily the case that the probation officer who prepares  
9 the pre-sentence investigation report here consults with the  
10 assistant United States attorney in order to try to find out  
11 from the assistant what the facts appear to be in connection  
12 with a sort of fleshing out, if you will, of what the case is  
13 all about. Certainly we cannot get it from the average in-  
14 dictment.

15 MR. ROXBY: I don't intend or expect that we should  
16 get it from the average indictment. It would be much too long  
17 and cumbersome.

18 THE COURT: Or too scant.

19 MR. ROXBY: I don't think we should do away with  
20 the privilege or proper responsibility of a jury to surmise  
21 and to conclude and to make their decision as to what the  
22 government's case is. I never have in my experience, and I  
23 am not that experienced, but I have had a good number of years  
24 in criminal practice, and I have never had presented in a pre-  
25 sentencing report such a long statement of the government's

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2 case.

3 THE COURT: I am afraid I have to disagree with you.  
4 Before I ever came to this bench, I have read more probation  
5 reports than I care to think about.

6 MR. ROXBY: I feel it is inflammatory.

7 THE COURT: Indeed, this is about one-third the size  
8 of the average Kings County probation officer's report back in  
9 my day as prosecutor, and I must admit I was chagrined they  
10 were so long at the time, but they were quite lengthy, and  
11 they were frequently 13, 15 pages legal size, what we call  
12 legal size. So they were more detailed than these are today.

13 Let me ask you, does the defendant then challenge  
14 portions of what is set forth here, and, if so, what is your  
15 wish in that respect?

16 MR. ROXBY: I think I will have to leave that up to  
17 Mr. Corbin.

18 MR. AMOROSA: For the record, Judge, it is obvious  
19 that this defendant did admit his built with respect to the  
20 conspiracy. He did indicate that he was looking to sell and in  
21 fact approached agents with regard to substantial amounts of  
22 cocaine.

23 THE COURT: We don't have to go back through the  
24 taking of the plea. That stands for itself. We sought to be  
25 quite detailed and reasonably exhaustive before the Court



2 accepted his offer to plead guilty to the particular count.

3 MR. CORBIN: Judge, there is no question about the  
4 validity of the count, that Mr. Batista understood the conse-  
5 quences of it. There is also no question that Mr. Roxby, my-  
6 self and Mr. Batista investigated this case at great length.

7 THE COURT: What is your request?

8 MR. CORBIN: My request is for an adjournment. The  
9 defendant disputes certain aspects of the probation report and  
10 I would like to see if we could schedule a conference to try  
11 to resolve any of the issues that are --

12 THE COURT: With whom? If you mean that you wish to  
13 have an adjournment because you have been taken by surprise  
14 with respect to certain statements which are made in the pre-  
15 sentence report, that you have reason to believe that certain  
16 serious statements made in the report are inaccurate and you  
17 wish to pursue the matter further, I will adjourn it for that  
18 purpose. We are going to keep this tight, gentlemen.

19 MR. CORBIN: I'd just like to point something out.  
20 I am not going to try to waste the court's time. I think you  
21 know the defendant came in to court after the attorneys in-  
22 vestigated this case, he acknowledged his guilt promptly,  
23 nobody was delaying anybody else. This has truly taken us  
24 by surprise.

25 I think that one of the problems with this report is



2 that in addition to the assertions which in my opinion go  
3 beyond the scope of the indictment, which contained informa-  
4 tion which is totally new to me, after interviewing my client  
5 and seeing portions of the government's files, it is also that  
6 from the defendant's standpoint his interviews were conducted  
7 in a manner which leaves a lot of information unverified.

8 It is true he is from Santo Domingos, but the pro-  
9 bation officer himself made it quite clear that the sole  
10 basis of the information from the defendant -- that the infor-  
11 mation from the defendant and about the defendant came from  
12 the defendant himself. At no time did the probation officer  
13 contact me, even though I was available, and I had called  
14 him on several occasions to ask him if there was anything I  
15 could do in obtaining information from Santo Domingo and other  
16 things, at no time did he contact me to try to get verifica-  
17 tion --

18 THE COURT: I gather that you state all of this in  
19 support of your application for an adjournment?

20 MR. CORBIN: Absolutely, Judge.

21 THE COURT: I am going to grant the adjournment,  
22 but I just want to caution you that I do not believe that a  
23 pre-sentence report need be limited, and I have said it already,  
24 I am really being repetitive, to the scant details that are  
25 frequently set forth in an indictment or for that matter even

2 to the lengthy detail which is set forth in the lengthy in-  
3 dictment.

4 As you know, the government under certain circum-  
5 stances, under certain rules of evidence and rules of law, is  
6 able to go beyond that which is charged in an effort to make --  
7 in an effort to prove certain states of mind. Sometimes cer-  
8 tain patterns of conduct. I don't know that merely because  
9 what is set forth in this report -- merely because it goes  
10 beyond what is set forth in count one, if it does, that that  
11 is necessarily somehow seriously defective or seriously  
12 prejudicial in the sense that it ought not be done. But you  
13 may have your adjournment.

14 MR. ROXBY: If your Honor please, I personally  
15 accompanied the defendant to the probation officer --

16 THE COURT: Counselor, there is little more that  
17 you could do with me here now.

18 MR. ROXBY: I would like to have the probation  
19 officer interview additional people who could --

20 THE COURT: I suggest that you meet with the chief  
21 or deputy chief, appropriate deputy chief, either Mr.  
22 Connolly or Mr. Kuznesof, and discuss with either of them your  
23 particular concerns, and then we will meet again. I will give  
24 you time to address yourself to these various concerns. How  
25 long do you need?



2 MR. ROXBY: Your Honor, what is your schedule? I  
3 understand that you have a trial that's been going on for some  
4 time.

5 THE COURT: Don't worry about that. We will take it  
6 one afternoon, or whenever.

7 MR. ROXBY: Friday the 26th, your Honor, or Thursday  
8 the 25th?

9 THE COURT: Let's take a look at Thursday. How  
10 is that for you, Mr. Amorosa?

11 MR. AMOROSA: Judge, I would appreciate it if we  
12 could do it the preceding week because I am beginning a long  
13 trial the 22nd of September. Although if your Honor wants to  
14 set it down the week of the 22nd, I could, of course, get  
15 somebody to cover for me. This trial will last about five  
16 weeks. I could get somebody to cover for me.

17 THE COURT: Today is the 5th. If we adjourn it for  
18 two weeks -- I am sorry, the 4th. If we adjourn it for two  
19 weeks, this would put it down for the 18th. Isn't two weeks  
20 enough for the inquiry?

21 MR. ROXBY: The only thought we had, your Honor, is  
22 we might want to write a letter to Santo Domingo and sometimes  
23 the mails take a little longer.

24 THE COURT: What would that be addressed to?

25 MR. CORBIN: Certain biographical information about

the defendant which has not been able to be verified.

MR. ROXBY: There is one comment made in there by the probation officer to the effect that this man was purportedly born in Santo Domingo and has relatives there and he couldn't verify it. You and I know he only got it from the mouth of the defendant.

THE COURT: Yes, but I don't consider that to be a matter -- if you tell me that he tells you that he was born in Santo Domingo, I am satisfied he was born in Santo Domingo. Unless there is some further reason, we will set it down for Thursday the 18th.

MR. ROXBY: The problem with the 18th, your Honor, is that I have a matter which is going to go to trial. It is a hearing and I know I will be tied up on the 18th.

THE COURT: Try the 17th.

MR. ROXBY: All that week. The 19th I am free.

MR. CORBIN: I can come in the 19th.

THE COURT: Let's make it 9:15 on September 19. What is the bail situation?

MR. CORBIN: Your Honor, the defendant has posted \$500 cash bail.

MR. AMOROSA: No objection to its continuance at this time.

THE COURT: Bail continued on the same terms and



conditions.

MR. CORBIN: Would it be possible for defense counsel to obtain or have further access to the probation report?

MR. ROXBY: We'd like to have an opportunity to read it and study it more carefully in order to be certain that any statements contained in there are correct.

THE COURT: Yes, but we will make it available in my chambers. Up to this point, we are not yet at the point of making copies or allowing copies to be made. It will be available in my chambers or I imagine it is available in Probation --

MR. ROXBY: They won't make it available to us.

THE COURT: It will be available for your study and whatever in my chambers, just don't make a copy of it, as such. If Mr. Amorosa requires the same opportunity, it is available to him as well.

(Court adjourned.)

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

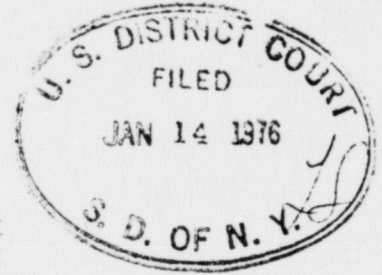
*Laurence H. Keneffell*

Official Court Reporter  
U. S. District Court

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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UNITED STATES OF AMERICA :

-against- :

75 Cr. 320

ERNESTO BATISTA, :

Defendant. :

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September 19, 1975  
9:30 a.m.

BEFORE:

HON. LAWRENCE W. PIERCE,

District Judge

APPEARANCES:

DOMINIC F. AMOROSA, ESO.  
Assistant United States Attorney

ROBERT CORBIN, ESO.  
ROBERT ROXBY, ESO.  
Attorneys for the Defendant.

SYLVIA AGUILAR - Spanish Interpreter.

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2 MR. AMOROSA: Government is ready.

3 MR. CORBIN: Defendant is ready, your Honor.

4 THE COURT: We have an interpreter present.

5 Please swear the interpreter.

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6 S Y L V I A A G U I L A R, sworn by the Clerk of

7 the Court as the Official Spanish Interpreter,

8 interpreted as follows:

9 THE COURT: Would you ask Mr. Ernesto Batista  
10 if he understands you, Miss Aguilar.

11 (Miss Aguilar complied.)

12 THE COURT: The Court has received a letter from  
13 defendant's attorney dated September 10, 1975.

14 That letter challenges certain portions of the  
15 pre-sentence report. The Court has considered that letter  
16 and has deemed it advisable to exclude the challenged por-  
17 tions of the report from its determination at sentence and  
18 having done so, and having modified the intended sentence  
19 accordingly, I believe that we are now ready to proceed.

20 Mr. Batista, you are now before the Court for  
21 sentence.

22 On June 26, 1975, you pleaded guilty to the  
23 offense charged in Count 1 of the indictment. In substance  
24 you were convicted of conspiracy to violate the narcotic  
25 laws of the United States, more specifically, with violation

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2 of Section 841 or rather 846 of Title 21 of the United States  
3 Code.

4 For the offense charged in Count 1, the law  
5 provides a maximum punishment of up to 15 years imprisonment  
6 or up to \$25,000 fine or both, and a special parole term of  
7 at least three years to follow any term of confinement.

8 Counsel, do you know of any reason why sentence  
9 should not be imposed at this time?

10 MR. CORBIN: No, your Honor.

11 THE COURT: What do you have to say in mitiga-  
12 tion of sentence?

13 MR. CORBIN: Your Honor, I have the following  
14 things to say:

15 Before going into an explanation of why I think  
16 Ernesto Batista can be relied upon to obey the law, I would  
17 just like to comment on one or two items in the probation  
18 report briefly.

19 First, as far as the report's conclusion that  
20 Mr. Batista appears not to understand the serious nature  
21 of his behavior or the consequences flowing therefrom, I  
22 can only say to the Court that as his attorney, I have been  
23 his attorney now since the early spring and from the begin-  
24 ning, both Mr. Roxby and myself, have communicated to Mr.  
25 Batista the serious nature of his behavior and the conse-



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quences which could flow therefrom.

We have emphasized this in our many meetings together. It is our opinion that he does understand that his behavior has been extremely serious. One of the things that we specifically emphasized in the beginning is that in Federal Court neither an attorney nor a member of the Justice Department, nor a member of the Probation Department can predict exactly what the Court will do to a convicted felon.

Mr. Batista has understood this from the beginning, your Honor.

As far as the inferences in the report which relate to Mr. Batista really going around in New York City over the past couple of years, I have a letter in my hand from the Hotel Paris in Manhattan which indicates that he was a registered resident there for two years.

If the Court would like to see it I can show it to the Court.

THE COURT: Pass it up.

All right.

MR. CORBIN: As the report does state, Mr. Batista has been living at West 85th Street with his fiance for approximately a year.

Mr. Batista was born in Santa Domingo. His father left home when he was a young child. He informs me

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that he used to work in the markets around the city where  
he lived to help support his family. His payment would be  
in food, excess food, which would be available at the end  
of the day.

When he was a teenager and developed a proficiency in boxing, he used to entertain wealthy citizens in his country at parties they would throw or conduct in his home and he informed me that his payment for those exhibitions was in food, which he would bring to his family.

Both Mr. Batista and his fiance, Miss Hernandez, have informed me that the defendant has regularly sent monies home to his family in Santo Domingo. Mr. Batista has been in a stable and what seems to me to be an affectionate relationship with his fiance, Miss Hernandez, who is in the courtroom today.

They tell me they have known each other for three years. They have been together ever since I know them, Judge. I don't know whether the Court has any feeling as to whether Mr. Batista is a sensitive individual or not. Perhaps a short vignette would perhaps point this out.

Several years ago he met a man who later became his friend. This man is a well-known bandleader in the City of New York, whose band has recently performed at Madison Square Garden and the Americana Hotel.



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2 This is the Ismael Rivera, who is referred to  
3 in the probation report, who has recently employed Mr.  
4 Batista.

5 At the time that they met, Mr. Rivera was a  
6 heroin addict and had been for many years. As a result of  
7 Mr. Batista's friendship with this man, Mr. Batista insisted  
8 that he train with him. When Mr. Batista embarked on his  
9 physical training he spent a lot of time with him and  
10 incorporated him into his life and according to Mr. Rivera,  
11 Mr. Batista gave him the strength to confront his addiction  
12 problem, which he is now cured of.

13 As far as the defendant's behavior and conduct  
14 since he first came before the Court, I would like to point  
15 out the following things:

16 First, he has acknowledged his guilt quite  
17 promptly after the indictment was handed down. To date he  
18 has cooperated with every directive and instruction that his  
19 probation officer has given him. I would point out to the  
20 Court that I think Mr. Batista respects the Court and the  
21 laws of this country. He is free on what I would consider  
22 to be imminently reasonable bail, the kind of bail which I  
23 think any individual that had to, could probably raise. Yet  
24 despite the fact that he knows and has known from the  
25 beginning of this case that he faces a very lengthy jail

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term, he has at all times remained within the jurisdiction and appeared in court at each and every adjourned date.

Another aspect of his behavior which I would mention, Judge, is that despite his current troubles, Ernesto Batista has never tried to display any of the frustrations which he may feel about his current difficulties by harrassing or contacting any of the informants known to him in this case, who were responsible for introducing him to agents of the DEA.

For these reasons, your Honor, I think there are things in Mr. Batista's background that would show strength, which show a degree of character and can help the Court conclude, if it chooses, that Mr. Batista would be an excellent candidate for probation. He could be specially supervised. Any violations he might make of probation could be easily monitored and quickly dealt with in any manner deemed by the Court.

Thank you very much.

THE COURT: Mr. Batista, do you know of any reason why sentence should not be imposed at this time?

THE DEFENDANT: I do not understand that.

THE COURT: Do you wish to speak with your lawyer a moment?

THE DEFENDANT: I have said everything.



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THE COURT: Is there anything you wish to say on your own behalf or do you have any information you wish to present in mitigation of sentence?

THE DEFENDANT: I come here responsible for what I have done and that is why I am here and I hope that you have the most leniency with me because I feel regretful for what I have done and I will never do it again.

THE COURT: What do you do for a living now, sir?

THE DEFENDANT: I am working in the band with Ismael.

MR. CORBIN: That is Mr. Rivera.

MR. ROXBY: He sets up the stands and the microphone and the electronic equipment, your Honor.

THE COURT: All right.

Mr. Amorosa, does the Government have any comment?

MR. AMOROSA: We don't have anything to say, your Honor.

THE COURT: The Court considers the nature of the crime charged to be one of the serious charges that would come before this Court.

Drug selling is the scourge of this city. It leads to tragedy and suffering in the lives of vast

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2 numbers of our citizens.

3 As an alien in this country, the defendant had  
4 reason to observe the laws of this country as conscientiously  
5 as any American citizen.

6 Due to the serious nature of the charge, it is  
7 adjudged that the defendant is committed to the custody of  
8 the Attorney General or his authorized representative, for  
9 a term of seven years with a special parole term of three  
10 years thereafter, pursuant to Title 21, United States Code,  
11 Section 841.

12 Mr. Corbin, Mr. Roxby, what is your motion with  
13 respect to counts 2 through 4 and 5?

14 MR. ROXBY: I would ask at this time that those  
15 counts be dismissed.

16 MR. AMOROSA: We have no objection, your Honor.

17 THE COURT: Dismissed.

18 MR. ROXBY: I think it should also be noted on  
19 the record that the defendant herein has cooperated with  
20 the Government and he has at all times made himself avail-  
21 able to the Government or its agencies for any and all  
22 appearances.

23 The Government has indicated that they acknowledge  
24 his cooperation and I would respectfully trust that at any  
25 times when probation or parole would be under consideration



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2 we could expect them to indicate such to the parole board  
3 in his behalf inasmuch as he is available at all times now  
4 and in the future as he has been in the past, and will  
5 cooperate with them further.

6 THE COURT: Anything further?

7 MR. ROXBY: No, your Honor.

8 THE COURT: All right.

9 The defendant is remanded.

10 MR. ROXBY: The defendant has been advised of  
11 his rights.

12 THE DEFENDANT: One word, can I speak?

13 How many years have you given me?

14 THE COURT: Seven.

15 THE DEFENDANT: No.

16 (Adjourned.)

17  
18 I (We) hereby certify that the foregoing  
19 is a true and accurate transcript, to the best  
20 of my (our) skill and ability, from my (our)  
21 stenographic notes of this proceeding.

*Joseph C. Cunniff*

Official Court Reporter  
U. S. District Court